

North America

January 28, 1999

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FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

Ms. Magalie Roman Salas  
Secretary  
Federal Communications Commission  
445 Twelfth Street, SW  
Washington, DC 20554

RE: NPRM, FCC 98-280  
IB Docket No. 98-192  
File No. 60-SAT-ISP-97  
Direct Access to INTELSAT

Dear Ms. Salas:

GlobeCast North America Incorporated ("GlobeCast") hereby submits an original and eleven (11) copies of its Reply Comments in the above-captioned Notice of Proposed Rulemaking ("NPRM") proceeding.

In summary, GlobeCast agrees with other commenters that the FCC should reconsider its analysis of its statutory authority to permit Level 4 direct access to the INTELSAT Satellite System, implementation of direct access would not constitute a 5<sup>th</sup> Amendment taking, direct access will advance the privatization efforts of INTELSAT and the competitive benefits of direct access will be best realized if accompanied by fresh look requirements.

Pleased contact the undersigned if there are any questions.

Very truly yours,

James T. Roche  
(202) 530-8142

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**Before the  
Federal Communications Commission  
Washington, D.C. 20554**

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**FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY**

<b>In the Matter of</b>	)	<b>IB DOCKET NO. 98-192</b>
	)	<b>File No. 60-SAT-ISP-97</b>
<b>Direct Access to the</b>	)	
<b>INTELSAT System</b>	)	

**To: The Commission**

**REPLY COMMENTS OF GLOBECAST NORTH AMERICA INCORPORATED**

GlobeCast North America Incorporated ("GlobeCast") hereby offers its reply comments in response to the Commission's Notice of Proposed Rulemaking, FCC 98-280, in International Bureau Docket No. 98-192, looking at the issue of "Direct Access to the INTELSAT System" ("NPRM"). The Commission requested comments and replies on issues related to permitting direct access to the INTELSAT system in the United States. This proceeding looks at the legal, economic, and policy ramifications of direct access (NPRM at para.1). GlobeCast will address only some of the issues raised by the parties filing comments in this proceeding.

GlobeCast is a U.S. based provider of communications and networking services for broadcast companies, television and radio programmers and other businesses located in the United States and overseas. In the conduct of its business, GlobeCast employs a variety of terrestrial and satellite-based transmission technologies, including both domestic and international satellite capacity. It currently leases two 36 MHZ equivalent transponders in the Pacific Ocean Region and more than ten 36 MHZ equivalent

GlobeCast NA Reply, January 28, 1999

transponders in the Atlantic Ocean Region on a full-period basis from Comsat, and leases additional capacity from other domestic and international space segment providers.

I. The FCC Should Reconsider Its Analysis of Its Statutory Authority to Permit Level 4 Direct Access to the INTELSAT Satellite System

A number of commenters assert that the only truly competitive INTELSAT access market in the United States would be one which allows Level 4 access. BT North America asserts that the Commission now has discretion under the Satellite Act to adopt both Level 3 and Level 4 direct access (BT at 10), and that the grant of either level of access would not alter the fundamental role of Comsat as INTELSAT Signatory, the repository of the United States' interest in the satellite system (BT at 11). BT North America believes that a policy that would allow Comsat's competitors Level 3 access, but would deny them Level 4 access, would preserve Comsat's return on its exclusive investment that it could use to underprice its U.S. competitors (BT at 17).

Cable and Wireless asserts that Level 4 access, which would increase the competitive options available for INTELSAT system access, is not plainly inconsistent with the Satellite Act and should be permitted (C&W at 10). Direct access will create a competitive environment in which INTELSAT space segment will support a wider variety of services at substantially lower costs. (C&W at 3). GlobeCast agrees with that analysis.

BT North America's comments support Cable & Wireless as to Level 4 access authority. The FCC may authorize other entities to receive non discriminatory and equitable access to INTELSAT which means access on the same terms as those enjoyed

by Comsat, including not only usage charges but also terms of ownership (BT at 13). BT North America further asserts that the Satellite Act establishes Comsat as a participant in INTELSAT on behalf of the United States government, not on behalf of the United States communications industry (BT at 15); the grant of authority to Comsat to have an ownership interest in INTELSAT is not exclusive to Comsat (BT at 14).

ICG Satellite Services states that Level 4 direct access is permitted in 17 countries, further enhances competition because it permits companies to invest directly in INTELSAT, thus obviating the need to pay a rate of return to Comsat, allows satellite services providers to compete even more effectively in the provision of satellite services via INTELSAT, and reduces Comsat's unfair competitive advantage over all other potential providers due to Comsat's subsidiaries in the United Kingdom and Argentina having Level 4 direct access in those countries (ICG at 1 and 2).

GlobeCast agrees with BT North America that, as in the United Kingdom, any entity licensed to operate earth stations using INTELSAT space segment capacity, or to provide satellite services using INTELSAT space segment capacity, should be allowed Level 4 direct access. Customers who do not wish to acquire capacity directly from INTELSAT or to invest in INTELSAT should be allowed to obtain satellite capacity from Comsat or from other entities who have Level 4 direct access (BT at 4).

## **II. Implementation of Direct Access Would Not Constitute a 5<sup>th</sup> Amendment Taking**

Comsat's opportunity to earn a fair return on all capacity used by direct access customers provides just compensation and negates any "taking" claim (PANAMSAT at 4). Loral points out that in the case of Level 3 access, the INTELSAT Signatory would

earn a return on its investment (up to 21%) for space segment used by Level 3 customers (Loral at 7, fn. 22). Thus, Comsat would earn a 21% return on INTELSAT satellite capacity it did not use (C&W at 9). Without question, there is no "taking" of Comsat's property when looking at Level 3 access, and arguably Comsat's 21% return on INTELSAT capacity usage, plus its other ownership rewards, negate any 5<sup>th</sup> Amendment claim when looking at Level 4 access.

AT&T asserts that Comsat does not have a property right in exclusive direct access to INTELSAT (AT&T at 5). Comsat's role as the sole U.S. government participant in INTELSAT does not give Comsat a vested property right in exclusive access to INTELSAT (AT&T at 6 and GE Americom at 7).

AT&T continues that, at most, direct access would cause the loss of Comsat's monopoly rents to which Comsat has no right (AT&T at 10). A mere reduction in profits is not enough to support a "taking" claim when all other ownership rights remain. Comsat will still have a reasonable opportunity to earn a fair financial return from its INTELSAT investment (AT&T at 9). Comsat should not be allowed to mark-up, in any way, INTELSAT charges or to charge a fee or surcharge for direct access to INTELSAT. Permitting Comsat to charge such fees would detract from the pro-competitive benefits of direct access by forcing customers to subsidize costs that Comsat is capable of recovering on its own (GE Americom at 11). Direct access will facilitate greater competition in the sale of U.S. satellite services because competitive carriers will be able to realize substantial cost savings and increased efficiencies in service quality and service provisioning (AT&T at 12).

### III. Direct Access Will Advance the Privatization Efforts of INTELSAT

GlobeCast agrees with Ellipso, Inc. that direct access should be authorized for all services in all markets and would enable the market, not Comsat, to determine the most efficient means of utilizing the INTELSAT satellite system (Ellipso at 18). As Ellipso so convincingly asserts, the Commission must dismantle the current regime of limited access to INTELSAT and allow the marketplace to determine how best to utilize this significant resource. The Commission possesses the authority to implement direct access, and in so doing would further the goals of INTELSAT privatization (Ellipso at 19).

GE Americom asserts that there is no reason to believe that direct access will impede reaching the goal of privatizing INTELSAT (GE Americom at 13). The Commission's implementation of direct access will not undercut INTELSAT privatization efforts, but instead such implementation actually may speed up the process. In light of the tremendous competitive benefits INTELSAT privatization will bring, direct access will not diminish support for this privatization effort (GE Americom at 13).

### IV. The Competitive Benefits of Direct Access Will Be Best Realized if Accompanied By Fresh Look Requirements

Numerous commenters in this proceeding favor the fresh look approach to long-term Comsat customer contracts. If the Commission permits direct access to INTELSAT, the fresh look approach will be warranted to ensure that Comsat's customers are able to enjoy the benefits of direct access (Loral at 9). The Commission must grant fresh look rights to Comsat's existing long-term contract customers otherwise they would not be

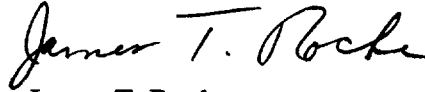
free to take advantage of direct access in a new more competitive environment (PANAMSAT at 9 and 10). These long-term agreements were signed when there was no real alternative to Comsat, and absent fresh look, as well as a release from any contract termination liability, Comsat's customers would be unable to obtain the competitive benefits of direct access for the duration of their long-term contracts with Comsat.

The Commission should apply its fresh look policy here in an area previously subject to monopoly but now open to competition and subject to significant changed circumstances (ICG at 5 and 6). Fresh look would allow INTELSAT users who are currently obligated to pay Comsat's inflated monopoly provider rates the opportunity to evaluate their current space segment needs, and either renegotiate their Comsat contracts or terminate them and deal directly with INTELSAT. AT&T fully supports fresh look and asserts that this proceeding is an appropriate occasion for the Commission to address fresh look for Comsat contracts, in that such policy would enable customers to avail themselves of new opportunities in a developing competitive market (AT&T at 13 and 14).

Both Sprint and MCI WorldCom urge the Commission to allow those parties utilizing INTELSAT services under long-term contracts a period of 6 months following the implementation of direct access to renegotiate those contracts (Sprint at 13 and MCI at 28). Long term commitments between Comsat and its INTELSAT customers place a cloud over the possibility of those customers' benefiting from direct access. The Commission needs to apply fresh look in connection with direct access.

WHEREFORE, GlobeCast North America Incorporated offers these reply comments regarding the subject Notice of Proposed Rulemaking.

Respectfully submitted,

A handwritten signature in cursive script, reading "James T. Roche".

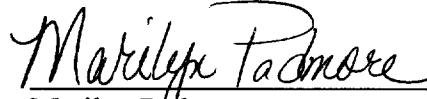
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January 28, 1999



## CERTIFICATE OF SERVICE

I, Marilyn Padmore, do hereby certify that copies of the foregoing Comments of GlobeCast North America Incorporated were Hand Delivered or sent by United States first-class mail, postage prepaid, on this the 28<sup>th</sup> day of January, 1999 to the below listed parties

  
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